

200398



National Mining Association
Foundation For America's Future

Joseph E. Lema

Vice President

Manufacturers and Services Division

November 17, 2000



Surface Transportation Board
Office of the Secretary
Case Control Unit
Attn: STB Ex Parte No. 582 (Sub-No. 1)
1925 K Street, N.W.
Washington, D.C. 20423-0001

ENTERED
Office of the Secretary

NOV 17 2000

Part of
Public Record

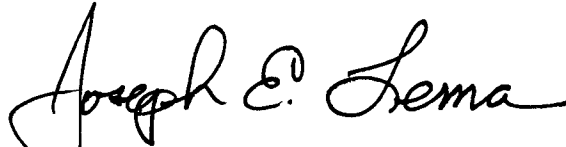
Re: STB Ex Parte No. 582 (Sub-No. 1)
Major Rail Consolidation Procedures
Notice of Proposed Rulemaking
Comments of the National Mining Association

Dear Mr. Secretary:

Enclosed for filing in the above-captioned proceeding are the original and twenty-five copies of the comments of the National Mining Association. Also enclosed is a 3.5 inch IBM-compatible disk containing an electronic copy of the comments.

Thank you for your consideration.

Respectfully submitted,


Joseph E. Lema

cc: General Richard L. Lawson, USAF-ret.
President and Chief Executive Officer
National Mining Association



BEFORE THE
SURFACE TRANSPORTATION BOARD

EX PARTE NO. 582 (SUB-NO. 1)

MAJOR RAIL CONSOLIDATION PROCEDURES
NOTICE OF PROPOSED RULEMAKING

COMMENTS OF THE NATIONAL MINING ASSOCIATION

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November 17, 2000

BEFORE THE SURFACE TRANSPORTATION BOARD

STB EX PARTE NO. 582 (SUB-NO. 1)
MAJOR RAIL CONSOLIDATION PROCEDURES
NOTICE OF PROPOSED RULEMAKING

COMMENTS OF THE NATIONAL MINING ASSOCIATION

NOVEMBER 17, 2000



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General Comments

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The National Mining Association, hereinafter referred to as "NMA," in general, finds the rulemaking proposed on October 3, 2000 represents a significant improvement in the merger procedures of the Surface Transportation Board (the "Board"). Further, NMA believes that if the proposed procedures had been followed in the two previous decades which were marked by numerous major rail consolidations, serious difficulties with rail services could have been avoided. The proposed procedures, we believe, may dampen the desire for new rail consolidations and, if future rail merger applications are approved by the Board, the quality of rail services may be expected to rise for affected producers, consumers, and shippers of rail-dependent commodities, e.g. coal, metallic ores, metals, and nonmetallic minerals.

On the whole, therefore, NMA believes the proposed rulemaking is sound, with the proviso that its soundness in practice depends heavily on the views of the Board in the future as the Board faces new merger applications and decides on what measures would raise the bar with regard to merger benefits, merger harm, preservation of competition, enhancement of competition, and service assurance, all of which are pivotal elements of the Board's proposed rulemaking. Preceding more detailed comments on selected provisions in the proposed rulemaking, NMA offers summary comments on five aspects of rail mergers cited above.

Merger Benefits

While it is understandable that merger applicants see the merger transaction as a way to lower costs incurred in providing services and to raise their share of freight tonnage attracted in competition with other modes, the rail-dependent commodity producers, consumers, and shippers, in particular those served only by the merged rail carrier, must have effective access to the Board for relief from possible abuse in rates and services at the hands of the merged carrier if unable to negotiate a fair and equitable railroad transportation services contract and subsequently faced with a public tariff furnishing unreasonable and/or inadequate conditions.

Merger Harm

Recent railroad mergers and consolidations have resulted in substantial losses to commodity producers and consumers due to difficulties in rail service provided by merged rail carriers during periods in which trackage, yards, equipment, crews, and management systems were becoming adjusted for unified train operations. Those problems created financial losses, as well as impediments in penetrating future markets. Emergency relief stemming from difficulties

in unifying railroad operations when implementing a merger, and recovery of losses experienced in such circumstances, should be provided for in merger approvals.

Preservation of Competition

No railroad merger should be approved if it would diminish effective transportation competition for moving the same commodity from the same origination to the same termination. Measures are available to condition approval of a merger to avert diminution of competition. The "shared access" technique and "open gateway" requirement are two concepts that have applicability in that regard, as are "trackage rights" in situations where having "trackage rights" does not result in a circuitous routing, and/or an alternative route on which a second carrier refuses to provide reasonable services. Further, it must be understood that moving heavy bulk freight for relatively long distances by truck does not represent effective transportation competition with a carrier positioned to provide rail services.

Enhancement of Competition

The policy of the Board to consider, and seek with high favor, proposals for enhancing competition in the applicants' request for Board approval of a merger transaction is a marked advance in the Board's assessment of the merits of a rail merger. Applications for "shared access," "open gateways," "trackage rights," "reciprocal switching," and other rail-to-rail concepts possible through creative railroad management procedures are desirable as supported by the Board's proposed major rail consolidation procedures. The policy is distinguished by both emphasizing enhancing, not simply preserving, competition and stimulating the rail industry to develop methods for enhancing competition.

Service Assurance

Assurance that a rail merger will not result in diminution of existing rail services, and will produce benefits in the quality of services presented by the applicants in an operational plan for the merged carrier, we believe, represents a vital controlling factor in granting approval of a merger application. Essential requirements in regard to service assurance are: 1) metrics for measuring rail services post-merger versus service levels to be provided as set forth in an adopted operational plan; 2) monitoring of compliance by the merged carrier with commitments on post-merger services; 3) strategy for enabling immediate remedial actions for relief from difficulties in rail services if experienced in post-merger rail operations; and 4) process for recovery of damages incurred by commodity producers and/or shippers attributable to failure of the merged carrier to provide the levels of services committed to by the carrier in a rail operational plan accepted when approving a merger application.

Proposed Revisions To Section 1180.1 General policy statement for merger or control of at least two Class I Railroads

Proposed Section 1180.1(a): General

Section 1180.1(a) states “the Board does not favor consolidations that reduce the railroad and other transportation alternatives available to shippers unless there are substantial and demonstrable public benefits to the transaction that cannot otherwise be achieved.” It states further “Such public benefits include improved service, enhanced competition, and greater economic efficiency.” On the one hand, it is indicated that consolidations should not reduce transportation alternatives. Yet, on the other hand, later the Section indicates that public benefits of a merger transaction, along with improved service and greater economic efficiency, include enhanced competition. Taken together, these statements seem to imply that the Board may find that a consolidation which reduces transportation alternatives, i.e. reduces transportation competition, could be supportable if the transaction, at the same time, enhances transportation competition. We believe the Board should find a merger transaction to be approvable if, unless otherwise mitigated it will not reduce, and rather will enhance, transportation competition. The inclusion of enhanced competition as a key ingredient in a consolidation proposal is considered by NMA to represent a leading attribute of the Board’s proposed rulemaking, joined with the preservation of transportation competition in place prior to implementation of a merger transaction.

Proposed Section 1180.1(c): Public interest considerations

NMA believes, consistent with other comments herein, the statement that “to maintain a balance in favor of the public interest, merger applications must include provisions for enhanced competition” is of pivotal importance in this rulemaking. The Board, in its discussion of enhanced competition, refers among other measures available for that purpose, the granting of trackage rights. That approach has been used in previous mergers as a way to avert potential reduction in competition; however, although it can represent a useful technique in certain circumstances, trackage rights do not always furnish practical alternative routings, notably where their use involves substantially circuitous traffic routing and/or when a second carrier for whom trackage rights are available refuses to provide reasonable services over the alternative route, leaving the traffic in the hands of the otherwise dominant carrier.

Proposed Section 1180.1(c)(1): Potential benefits, and Proposed Section 1180.1(c)(2): Potential harm

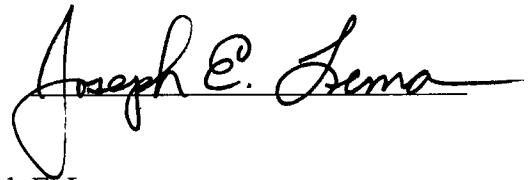
With regard to potential benefits and harm, the Board’s proposed rulemaking appears to consider a rail merger’s implications for distribution of freight in domestic and international commerce only by assessing how the nation’s existing rail network serves current commodity flow patterns. Previous mergers have caused reductions in the miles of rail trackage in service, in many cases through abandonments of trackage and right-of-

ways. Further shrinkage of irreplaceable rail access could result in seriously adverse impacts on a growing economy and on our national security and mobility needs as these relate to line-haul rail corridors in various rail service areas. Rail-dependent movements, e.g. coal and non-fuel minerals supplied by mines in the east, the midwest, and the west, must not become impeded by further reductions in rail infrastructure used to meet current and future transportation needs. This matter should be taken into account when rail carriers submit merger proposals.

Proposed Section 1180.1(g): Oversight, and Proposed Section 1180.1(h): Service assurance and operational monitoring

NMA strongly supports the Board's proposed formal oversight process to be effectuated for at least five years of merger implementation, including periodic carrier reports on compliance with commitments made in the course of seeking Board approval of a merger transaction. The requirement for filing a service assurance plan with the merger application and railroad operational plan, incorporating problem resolution teams and procedures for resolving post-merger problems, is fundamental in the interest of realistically defining and evaluating performance requirements. NMA has a keen interest in the possibility of having mining industry representation on the Board-proposed "Service Council made up of shippers, railroads and other interested parties to provide an ongoing forum for the discussion of implementation issues."

Respectfully submitted,



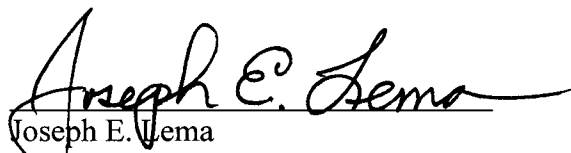
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November 17, 2000

CERTIFICATE OF SERVICE

Pursuant to the Surface Transportation Board's decision served October 3, 2000, a copy of the foregoing has been served by the United States mail, postage pre-paid, to all parties of this 17th day of November, 2000.

A handwritten signature in black ink, reading "Joseph E. Lema". The signature is fluid and cursive, with a long horizontal stroke at the end.

Joseph E. Lema
Vice President, Manufacturers
and Services Division
NATIONAL MINING ASSOCIATION